



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

Date Amended:	Enrolled	Bill No:	AB 1765
Tax:	Sales and Use Tax Special Taxes and Fees	Author:	Assembly Revenue and Taxation Committee
Related Bills:			

BILL SUMMARY

This bill contains **Board of Equalization-sponsored provisions** for the sales and use tax and the special taxes and fees programs, which would do the following:

- Amend Section 6479.3 of the Sales and Use Tax Law, and the various special taxes and fees laws to eliminate the requirement that persons voluntarily electing to remit amounts due by electronic funds transfers must do so for a minimum of one year, in order to encourage more voluntary participation.
- Amend Sections 9405, 9407, 9411, 9420 and 9432 of the Revenue and Taxation Code to properly reference the International Fuel Tax Agreement.
- Amend Section 30180 of the Cigarette and Tobacco Products Tax Law to allow for relief of penalty, consistent with other relief of penalty statutes.
- Repeal Sections 38203.5 and 38907 of the Revenue and Taxation Code to delete obsolete date specific laws.
- Amend Section 60043 of the Diesel Fuel Tax Law to eliminate the licensing and reporting requirements for government entities that use only tax-paid diesel fuel on the highway and have no tax liability, in order to ease their reporting requirements.
- Amend Section 60603 of the Diesel Fuel Tax Law to allow the state to designate an inspection site for diesel fuel, consistent with current practice.

In addition, this bill would amend, repeal and add Section 6479.3 to specify that, until January 1, 2006, persons whose estimated tax liability average \$20,000 or more per month, shall remit amounts due by an electronic funds transfer. In addition, the proposed amendments would, operative January 1, 2006, lower the \$20,000 threshold to \$10,000.

Key Amendments

The **August 22, 2005, amendments** added the provisions related to delaying the operative date of the lowering of the electronic funds transfer threshold.

The **April 27, 2005, amendments** deleted the provision that would have increased from “\$10.00 or less” to “\$20.00 or less” the amount that is not required to be refunded absent a claim for refund. The amendments also repeal obsolete date specific laws from the Timber Yield Tax Law.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

The **April 18, 2005, amendments** corrected an inadvertent drafting error to Section 9411, which defines the term "IFTA." The amendment is consistent with the language adopted by the Board as part of its 2004-05 Legislative package.

ANALYSIS

Raise the threshold for persons who are required to remit their amounts due by electronic funds transfers to \$20,000 until January 1, 2006, and reduce the threshold to \$10,000 thereafter.

Revenue and Taxation Code Section 6479.3

Current Law

Under existing law, as modified by AB 139 (Ch. 74, Assembly Budget Committee) of the 2005-06 Regular Session, effective July 19, 2005, persons whose estimated sales and use tax liability average *\$10,000 or more per month* are required to remit their tax payments by an electronic funds transfer. Prior to the enactment of AB 139, persons whose estimated sales and use tax liability averaged *\$20,000 or more per month* were required to remit their tax payments by an electronic funds transfer.

Proposed Law

The amendments make the changes to Section 6479.3 of the Sales and Use Tax Law enacted by AB 139 operative January 1, 2006.

Comment

The purpose of these amendments is twofold: first, since enactment of AB 1765 would chapter out AB 139's amendments to Section 6479.3, AB 1765 requires an amendment to incorporate the changes that AB 139 created. Secondly, AB 139 became effective immediately – on July 19, 2005 - allowing virtually no lead time for the Board or taxpayers to prepare for the changes. In order to successfully implement AB 139's provisions, detailed, cooperative efforts are necessary with taxpayers and within the internal processes of the Board to prepare for the approximate 11,500 new taxpayers that are required to remit their tax payments through the electronic funds transfer method. Consequently, this change would make the operative date January 1, 2006 to allow the Board sufficient time to successfully implement the program.

Eliminate the requirement that persons voluntarily electing to remit amounts due by electronic funds transfers must do so for a minimum of one year

Revenue and Taxation Code Sections 6479.3, 7659.9, 8760, 30190, 32260, 40067, 41060, 43170, 45160, 46160, 50112.7, 55050, and 60250

Current Law

Under existing law, Section 6479.3 of the Revenue and Taxation Code provides the statutory authority to require taxpayers with monthly tax liabilities averaging \$20,000 or more to remit their tax payments via an electronic funds transfer (EFT). Under the law, other taxpayers may voluntarily elect to remit their tax liabilities via the EFT method, but the law requires that these taxpayers continue this method of payment for a minimum of one year.

Proposed Law

This bill would amend the various business taxes statutes to delete the provision that requires those taxpayers who voluntarily remit their funds by the EFT method to continue that method for a minimum of one year.

Comment

In 1991, when the EFT provisions were added into the law, the process to transmit and accept payments via EFT was a relatively new concept. The one-year minimum requirement was incorporated into the provisions, because it was believed at the time that acceptance of payments in different forms from the same taxpayer could complicate matters. However, now with the frequency and familiarity with the EFT payment methodology, the one-year minimum requirement is no longer necessary. And, most taxpayers that voluntarily choose to remit their payments via EFT likely prefer that method, so there is no apparent reason to require volunteers to commit to the EFT program for a year or more at the outset. In fact, such a requirement could actually discourage taxpayers from volunteering for the EFT program.

Properly reference the International Fuel Tax Agreement

Revenue and Taxation Code Sections 9405, 9407, 9411, 9420, and 9432

Current Law

Under current law, Section 9405 of the Revenue and Taxation Code states that Chapter 2, Part 3.5, Division 2 of the Revenue and Taxation Code shall be administered in conjunction with the IFTA Articles of Agreement, the Use Fuel Tax Law, and the Diesel Fuel Tax Law. "IFTA" is defined in Section 9411 to mean the International Fuel Tax Agreement, which is a document that is comprised of three separate parts—the Articles of Agreement, the Procedures Manual and the Audit Manual.

Proposed Law

This bill would amend Sections 9405, 9407, 9411, and 9432 to clarify the definition and reference to the International Fuel Tax Agreement. The bill would also amend Section 9420 to clarify that the license for the IFTA is a license and not a permit.

Comments

By referencing only the IFTA Articles of Agreement in Section 9405, existing law too narrowly defines the governing document. To correct this, Section 9411 would be amended to properly define the International Fuel Tax Agreement. Also, Sections 9405, 9407, 9420 and 9432 would be amended to properly reference the International Fuel Tax Agreement. The reference to IFTA Articles of Agreement in current law does not completely identify the International Fuel Tax Agreement, which by its terms includes all of the governing documents (e.g. the Articles of Agreement, the Procedures Manual and the Audit Manual). These suggested changes are consistent with changes recommended in the Final Report (April 1999) prepared by the National Conference of State Legislatures titled "IFTA Legislation and State Constitutional Provisions Project".

Under the current law, Section 9420 states that all interstate users who choose to obtain an IFTA permit from the Board shall apply for a license and secure decals for their vehicles. The rest of the section uses the term license instead of permit. A license is what is issued to an IFTA licensee. Therefore, the term IFTA "permit" should be changed to IFTA "license" to conform with the rest of the law and the IFTA Agreement.

Relief of Penalty

Revenue and Taxation Code Sections 30180 and 30283

Current Law

Under existing law, distributors of cigarettes can purchase cigarette stamps on either a cash or deferred basis. Those distributors who purchase stamps on a deferred basis are not required to pay the state until the 25th day of the following month.

Section 30171 requires any distributor who fails to pay any amount owing for the purchase of stamps or meter register settings within the time required, to pay a penalty of 10 percent of the amount due in addition to the amount plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the amount became due and payable until the date of payment.

Article 6 of Chapter 4 (commencing with Section 30281) contains provisions that relieve a person of the tax, interest or penalty under specified conditions. These provisions include:

- Section 30282 provides that if the Board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the **penalty** provided by specified sections, including Sections 30171.

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- Section 30283 provides that if the Board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the **interest** provided by specified sections, not including Section 30171.
- Section 30283.5 provides that the Board, in its discretion, may relieve all or any part of the **interest** imposed on a person under the Cigarette and Tobacco Products Tax Law where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the Board acting in his or her official capacity.
- Section 30284 provides that if the Board finds that a person's failure to make a timely report, return, or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the **taxes** imposed under the Cigarette and Tobacco Products Tax Law and **any penalty or interest** thereto.

Unfortunately current law contains conflicting statutes. Section 30180 specifically states that Article 6 of Chapter 4 (which contains Section 30282, 30283.5 and 30284) does not apply to amounts due or paid with respect to purchases of stamps, thereby creating conflict between Section 30180 and Sections 30282, 30283.5 and 30284.

Proposed Law

This bill would amend Section 30180 to delete the reference to Article 6 (commencing with Section 30281) of Chapter 4 and allow the Board to continue to relieve a cigarette stamp purchaser of the tax, interest and/or penalty under Section 30282, 30283.5, and 30284.

In addition, this bill would amend Section 30283 to grant the Board the authority to relieve a person from the payment of interest imposed under Section 30171 if the person's failure to make a timely return or payment was due to a disaster, as provided.

Comment

This relief of penalty provisions is consistent with other relief of penalty provisions in the cigarette tax program and all other tax and fee programs administered by the Board.

Delete obsolete date specific laws from the Timber Yield Tax Law*Revenue and Taxation Code Sections 38203.5 and 38907***Current Law**

Revenue and Taxation Code Section 38203.5 was added following the adoption of the Timber Yield Tax in the late 1970's in order to transition from the ad valorem property taxation of timber to the Timber Yield Tax. The purpose of this section was to avoid the public expense and taxpayer confusion that would result from collecting additional taxes for the 1979 year while at the same time refunding excessive taxes for the 1980 year where, in many instances, comparable amounts would be collected from and refunded to the same taxpayers. The purpose of this section was also to avoid the public expense and taxpayer confusion that would result from reducing the 1981 yield tax rate and increasing the 1981 reserve fund tax rate by identical and hence, offsetting percentages. At this time the timber yield tax has been fully implemented, which makes this statute obsolete.

Revenue and Taxation Code Section 38907 was added following the adoption of the Timber Yield Tax in the late 1970's in order to transition from the ad valorem property taxation of timber to the Timber Yield Tax. Section 38907 requires that the Controller certify for a specified period the amount necessary to restore the deficient allocations plus the amount necessary to bring the Timber Tax Reserve Fund required by section 38905 to five million dollars. Section 38905, which provided for the restoration of any deficient allocations for the Timber Tax Reserve Fund, was repealed in 1982 (Ch. 1058) and section 38902, which provided for the Timber Tax Reserve Fund, was repealed in 1984 (Ch. 678).

Proposed Law

This proposal simply deletes provisions that are date specific and subsequently are obsolete.

Tax Paid Diesel Fuel Used by Governmental Entities*Revenue and Taxation Code Section 60043***Current Law**

Under the existing Diesel Fuel Tax Law, all government entities that operate a diesel-powered highway vehicle upon the state's highways are required to have a diesel fuel tax license and to file monthly tax returns. However, only government entities that use dyed (untaxed) diesel fuel in a diesel-powered highway vehicle on state highways pay tax on the tax return and the tax is based upon each gallon of dyed diesel fuel used on the highway.

Proposed Law

This bill would amend Section 60043 to eliminate the need for a government entity to obtain a license and file tax returns when that entity only uses tax-paid diesel fuel on the highway.

Comment

A number of government entities purchase only tax-paid diesel fuel for use on the highway and owe no additional tax on the tax return. The licensing and reporting requirements place an additional burden on these governmental entities that have no tax liability. Some government entities are questioning the need for a license, including the obligation to file monthly tax returns, when they only purchase tax-paid diesel fuel and therefore owe no additional tax.

State designated diesel fuel inspection site *Revenue and Taxation Code Section 60603*

Current Law

Under the existing Diesel Fuel Tax Law, officers or employees of the state are authorized to conduct inspections at any designated inspection site where evidence of activities of diesel fuel tax evasion may be discovered. A designated inspection site includes any state highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Internal Revenue Service (IRS) to be used as a diesel fuel inspection site.

Proposed Law

This bill would amend Section 60603 to clarify the state's authority to specify that either the IRS or the state may designate an inspection site at an "other location". In addition, this would update existing law to be consistent with the current practice of state, rather than IRS, conducted inspections.

Comment

When the diesel fuel tax law was enacted in 1995, only the IRS was conducting diesel fuel inspections. Thus, the inspection site language was drafted to authorize the IRS to designate an inspection site at a location other than the specified fixed sites controlled by the state. However, both the Board and the IRS now contract with the California Air Resources Board (CARB) to do inspections to check for diesel fuel tax evasion. Since the IRS designates the inspection sites where the CARB is to conduct inspections, such inspection sites qualify as IRS-designated.

However, a question has arisen as to the state's authority to designate an inspection site other than at one of the listed sites when such an inspection does not involve the IRS. A narrow interpretation of the statute could conclude that inspections could not be conducted at a site other than those specified in statute if the Board contracts with a state agency independent of the IRS. Since the law currently authorizes officers or employees of the state to conduct inspections at listed sites, and since state agencies currently conduct inspections at other locations designated by the IRS, it follows that the law should include a provision for the state, as well as the IRS, to designate an "other location" inspection site.

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COST ESTIMATE

The Board would incur insignificant costs to implement the provisions of this bill.

REVENUE ESTIMATE

This bill would not significantly impact state revenues.

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